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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HECTOR CODY ORTIZ III,

11 Plaintiff,

12 v.

13 PIERCE COUNTY, et al.,

14 Defendants.

CASE NO. C22-5947JLR-TLF

ORDER

15 **I. INTRODUCTION**

16 Before the court are: (1) Defendants Doctor Miguel Balderrama, Chief Patti
17 Jackson-Kidder, Lieutenant Gayle Pero, and Pierce County's (collectively, "Pierce
18 County Defendants") motion to dismiss (Pierce MTD (Dkt. # 14); Pierce Reply (Dkt.
19 # 19)); (2) Defendants Doctor Maria Ordonez and Jonathan Slothower's (collectively,
20 "NaphCare Defendants") motion to dismiss (NaphCare MTD (Dkt. # 16)); (3) Plaintiff
21 Hector Cody Ortiz III's response (Resp. (Dkt. # 18)); and (4) United States Magistrate
22 Judge Theresa L. Fricke's report and recommendation in which she recommends that the

1 court deny both motions to dismiss (R&R (Dkt. # 20)). No party filed objections to
 2 Magistrate Judge Fricke's report and recommendation. (*See* Dkt.) Having carefully
 3 reviewed the foregoing documents, along with all other relevant documents and the
 4 governing law, the court ADOPTS the report and recommendation (Dkt. # 20).

5 II. ANALYSIS

6 A district court has jurisdiction to review a Magistrate Judge's report and
 7 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court
 8 may accept, reject, or modify, in whole or in part, the findings or recommendations made
 9 by the magistrate judge." 28 U.S.C. § 636(b)(1). "The statute makes it clear that the
 10 district judge must review the magistrate judge's findings and recommendations de novo
 11 if objection is made, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,
 12 1121 (9th Cir. 2003) (en banc); *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
 13 2005) (noting that when no objections are filed, the court need not review de novo the
 14 report and recommendation). Because Mr. Ortiz is proceeding *pro se*, this court must
 15 interpret his submissions liberally. *See Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920,
 16 925 (9th Cir. 2003).

17 In her report and recommendation, Magistrate Judge Fricke denies both motions to
 18 dismiss, finding Mr. Ortiz plausibly alleged all Defendants violated his Fourteenth
 19 Amendment right to medical care in pre-trial detention. (*See* R&R at 6-21.) Magistrate
 20 Judge Fricke concluded that Mr. Ortiz's claims against Defendants Dr. Balderrama, Chief
 21 Jackson-Kidder, and Lieutenant Pero in their official capacities, however, should be
 22 dismissed as redundant of his claims against Pierce County. (*Id.* at 16.)

The court has thoroughly examined the record before it and finds Magistrate Judge Fricke's reasoning persuasive in light of that record. The court independently concludes that Pierce County Defendants' motion to dismiss (Dkt. # 14) should be denied, except with respect to Mr. Ortiz's official capacity claims against Defendants Dr. Balderrama, Chief Jackson-Kidder, and Lieutenant Pero in their official capacities, which should be dismissed as redundant of his claims against Pierce County. The court also independently concludes that NaphCare Defendants' motion to dismiss (Dkt. # 16) should be denied. Accordingly, the court ADOPTS the report and recommendation in its entirety.

The court now turns to the language in the proposed order adopting the report and recommendation instructing Magistrate Judge Fricke to inquire about the availability of *pro bono* counsel to represent Mr. Ortiz and authorize her to appoint available counsel. (Prop. Order (Dkt. # 20-1) ¶ 4.) Mr. Ortiz has not filed a request for appointment of *pro bono* counsel. (*See generally* Dkt.) There is no authority before the court authorizing appointment of *pro bono* counsel *sua sponte*. Accordingly, the court declines to adopt this instruction.¹

III. CONCLUSION

For the foregoing reasons, the court ORDERS as follows:

(1) The court ADOPTS the report and recommendation (Dkt. # 20);

¹ Nothing in this order precludes the court or Magistrate Judge Fricke from considering a motion for appointment of *pro bono* counsel by Mr. Ortiz, should he properly file such a request.

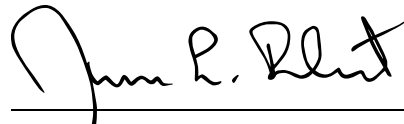
1 (2) Pierce County Defendants' motion to dismiss (Dkt. # 14) is DENIED except
2 with respect to Mr. Ortiz's claims against Dr. Balderrama, Chief Jackson-Kidder, and Lt.
3 Pero in their official capacities, which are DISMISSED;

4 (3) NaphCare Defendants' motion to dismiss (Dkt. # 16) is DENIED;

5 (4) The case is referred to Magistrate Judge Fricke for further proceedings and to
6 issue a scheduling order; and

7 (5) The court DIRECTS the Clerk to send copies of this order to Mr. Ortiz, to
8 counsel for all defendants, and to Magistrate Judge Fricke.

9 Dated this 14th day of June, 2023.

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12 JAMES L. ROBART
13 United States District Judge
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